

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**DAVE MUSTO, *et al.*,**

Plaintiffs,

**v.**

**PAULA ZARO,**

Defendant.

**Case No. 2:17-cv-506**

**Judge Graham**

**Magistrate Judge Deavers**

**ORDER**

This matter is before the Court for consideration of Plaintiffs' objections (ECF No. 54) to the Report and Recommendation issued by Magistrate Judge Deavers on November 19, 2018. (ECF No. 52). Magistrate Judge Deavers recommended that default not be entered against Defendant pursuant to Federal Rule of Civil Procedure 55 at this juncture and further recommended that:

1. Defendant's obligation to respond to the Complaint be suspended, pending issuance of a new case schedule;
2. Magistrate Judge Deavers conduct a status conference, by telephone, within forty-five (45) days from the date of an Order adopting this Report and Recommendation and that Magistrate Judge Deavers thereafter issue a new case schedule, including a new deadline for responding to the Complaint (with a reminder warning to Defendant that she must comply with new deadlines or timely file a motion for extension supported by good cause); and
3. The dates for the final pretrial conference and trial (ECF No. 40) be vacated and rescheduled following the issuance of a new case schedule by Magistrate Judge Deavers.

For the reasons set forth below, the Court **OVERRULES** Plaintiffs' objections (ECF No. 54) and **ADOPTS** the Report and Recommendation issued by Magistrate Judge Deavers on November 19, 2018. (ECF No. 52).

### **I. Standard of Review**

Plaintiffs timely filed their objections on November 30, 2018. If a party objects within the allotted time to a report and recommendation, the Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). As required by 28 U.S.C. § 636(b)(1)(C), the Court will make a *de novo* review of those portions of the Report and Recommendation to which Plaintiffs specifically object.

### **II. Plaintiffs' Objections**

Plaintiffs object to the Report and Recommendation to the extent it recommends that the dates for the final pretrial conference (currently scheduled for April 5, 2019) and trial (currently scheduled for May 6, 2019) be vacated. (ECF No. 54 at 1). Plaintiffs assert that, "It would be materially prejudicial and highly unfair to Plaintiffs to have their day in court delayed because of Ms. Zaro's counsel withdrawing and/or because two Orders were incorrectly addressed to Ms. Zaro after her counsel withdrew." (*Id.*). Plaintiffs believe that "the extent of discovery already conducted in the case" allows "more than sufficient time over the next 90 days to complete discovery and prepare and file" dispositive motions in advance of the currently scheduled final pretrial conference date. (*Id.* at 1–2). Plaintiffs further believe that the telephone status conference

with Magistrate Judge Deavers could be expedited to the extent that all agree to its immediate scheduling. (*Id.* at 2).

### **III. Discussion**

Plaintiffs' objections are noted, but the Court also notes the opportunity for their concerns to be heard at the telephone status conference to be scheduled within forty-five (45) days from the date of this Order. At that time, Plaintiffs may present their arguments to Magistrate Judge Deavers as to why the previously scheduled dates for the final pretrial conference and trial should be reinstated. At that point, Magistrate Judge Deavers may agree to recommend that the Court issue a notice of hearing reinstating the final pretrial conference date of April 5, 2019 and the trial date of May 6, 2019. Until such time, the Court shall vacate its previously issued Notice of Hearing setting those dates (ECF No. 40).

### **IV. Conclusion**

Upon *de novo* review, the Court **OVERRULES** Plaintiffs' objections (ECF No. 54) and **ADOPTS** the Report and Recommendation (ECF No. 52).

IT IS SO ORDERED.

/s/ James L. Graham  
JAMES L. GRAHAM  
United States District Judge

DATE: December 11, 2018